which Verizon interconnected with competitors a?loop facilities. However, the response also makes clear that *these* interconnections were undertaken as "interim" measures to accommodate competitors who needed to interconnect prior to the date Verizon could finish construction of dedicated interconnection facilities. In other words, Verizon's response corroborates NCC's claims – i.e., that Verizon does not interconnect at loop facilities as an initial matter, but does so as an ''interim"solution when the competitor is under duress, **at** least partly as the result of Verizon's insistence on building dedicated interconnection facilities

C **Verizon's *Obligations* Are Defined Not Only By The Provisions Of Its ICA With NCC, But By The Provisions Of Sections 251(b) And (c) *Of* The Act, As Well As State Law.**

In its brief, Verizon suggests that. once an **ICA** is approved by astate commission, that agreement governs the parties' legal obligations exclusively,, essentially superseding the parties' obligations under Sections 251(b) and (c) of the Act. VZ Brief, at 10-13. This suggestion is not consistent with the terms of the ICA **between** NCC and Verizon, and is nor supported by the case law cited by Verizon. Finally, even if Verizon **were** correct, a number of the violations of the Act cited by Staff in its brief, occurred prior to the Commission's approval of Verizon's ICA with NCC.

Staff went to great lengths to describe the manner in which Verizon's delay in executing and filing for Commission approval, the ICA with NCC violated Sections 25 1(b) **and** (c) of the Act. These violations occurred *before* the Commission approved the ICA between the parties. indeed *before* the ICA was wen filed with *the* Commission.

But once the ICA was approved by *the* Commission, ***the*** obligations imposed on the

parties under Sections 251(b) and (c) of the Act were not rendered a nullity, as Verizon asserts. are not vitiated In fact the ICA between the parties clearly incorporates the provisions of the Act, including Sections 251(b) and (c), implementing regulations, and state law.

The ICA makes *clear* that "[e]ach Party shall perform, terms, conditions and operations under this Agreement in a manner that complies with all Applicable **law,** including all regulations and judicial or regulatory decisions of all **duly** constituted governmental authorities of competent jurisdiction". MCIm ICA, Part **A,** Section 6.1. Further, this section cf the ICA provides that, "[i]n the event the *Act or* FCC Rules and Regulations applicable to this Agreement are held invalid, this Agreement shall survive. . .". Id. In addition, the ICA states that its validity, as well as "the construction **and** enforcement of its terms, and the interpretation of the rights and duties of the Parties, shall be governed by the Act and the laws of *the* State *of* West Virginia. . .". Id., Section 7.1.

More importantly, the 'Warranties" set forth in NCC's **ICA** *make* clear that the "generic" obligations imposed by Sections 251(b) and (c) of the Act, **as** well as state **law,** govern *the* parties' dealings with one another, including with regard to interconnection. That Section of the ICA states, in pertinent **part:**

> 13.1 **As** more specifically set forth herein, *each Party shall perform its obligations hereunder ai Parity, as defined in Part B of this Agreement, which definition* U *intended* it *embody the performance provisions set forth in 47 U.S.C. § 251. and any implementing regulations thereunder . . .;*
>
> * * *.
>
> 13.4 *As more specifically set forth in Attachment IV, Bell Atlantic shall*

provide Interconnection ai Parity and on a Non-Discriminatory Basis. MCIm shall provide Interconnection on a Non-Discriminatory Basis.

MCIm ICA, Part A, Section 13 (emphasis added). *That* the *"yeneric"* obligations of the Act continue to govern the parties' relationship; even after approval of *the* ICA, is thus clear. Far from superseding the obligations set forth in Sections 251(b) **and** (c) of the Act, the FCC's regulations, and *the* Commission's Telephone Rules which adopt *those* obligations, the ICA expressly incorporates those obligations.

Moreover, the decision relied upon by Venzon for its assertion that Sections 251 (b) and (c) *of* the 4ct no longer apply after approval of an ICA,[3] is *not* on point. The parties themselves have incorporated -- and agreed to be bound by -- the obligations set forth in Section 251 of the Act, and *any* implementing regulations thereunder (state or federal). Furthermore, the unique facts of the Trinko *make* that decision distinguishable. There. a competitive LEC's customer sued Verizon directly alleging violations of, among other things, Section 251 *of the* Act – despite the fact *that the* competitor and Verizon had resolved a dispute between them pursuant to their ICA's dispute resolution process. Trinko, 305 F.3d at 94-95. The dispute resolution provision in the ICA made it clear that the procedures of that process were "the exclusive remedy for all disputes" between the carriers "arising out of this Agreement or its breach". Id. at 94. The plaintiffs complaint, alleging violations of Section 251 of the Act, was dismissed by the district court, and affirmed by the appellate court. The

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[3] Law Offices of Trinko v. Bell Atlantic Corp., *305* F.3d *89* (2d Cir. 2,002). Verizon erroneously cited the *case as being* reported *in the* F.2d. See VZ Brief, *at* 11 Fn. 26.

appellate court concluded that the obligations of Section 251 of the Act are not "free standing," that they are implemented through state approved ICAs which may be negotiated without regard to the standards in Sections 251(b) and *(c)*, and that "[t]o read the [Act] in a way such that ILECs are governed exclusively by the broadly worded language of section 251 would make the option of negotiating interconnection agreements without regard to [the standards in Sections 251(b) and (c)] superfluous". Id. at 104.

At most, Trinko suggests that parties *may*, by negotiation, agree to standards different than *those* set forth in Sections 251(b) and (c) *of* the Act. Here, Verizon and NCC expressly agreed to be bound by those standards, including any implementing regulations. Nothing in the ICA governing NCC and Verizon suggests that the interconnection obligations in Sections 251(b) **and** (c), or regulations implementing those obligations, **have** been altered, modified or abrogated by the parties' agreement.

Verizon's suggestion that its interconnection obligations *are* spelled out exclusively in the ICA, and more importantly, that NCC's ICA does not incorporate the obligations set forth in Sections 251(b) and (c) of the Act, as well as implementing regulations, must be rejected.[4]

D. The Rulings Cited By Verizon Actually Suggest That 555 To NCC Should Be Considered Local.

Verizon claims that there "is no rational basis for treating calls to 555 numbers" any

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[4] Verizon also cites Verizon North, Inc. v. Strand, 2002 WL 31477193 (6th Cir. 2002), for the proposition that the state may not impose a different set of interconnection duties under state law. VZ Brief, at 13 & Fn. 31. The Commission did not impose a different set of obligations under state law, but rather imposed identical interconnection standards as a matter of state law. Therefore, Strand is inapposite.

differently than other non-geographic dialing codes (such as 500, 800, 900, etc.). VZ Brief, at 23. Unfortunately for Verizon, there is a rational basis for the Commission treating 555 traffic differently – namely the fact that the Company itself treats 555 traffic as local rather than access.

in its brief. Verizon suggests that the fact it treats 555 traffic as local for itself is of no import.,and cites two cases to support its clam that 555 traffic *is* access, regardless of how Verizon denominates it. VZ Brief, at 22-28. Contrary to Verizon's reading of the decision. these cases actually support NCC's (and Staff's) position that Verizon's characterization of 555 traffic as local *is* determinative.

Verizon cites the FCC's decision regarding intercarrier compensation for interLATA foreign exchange (FX) service in AT&T Corporation v. Bell Atlantic - Pennsylvania[5] as supporting its position. VZ Brief, at 23. Verizon correctly characterizes the FCC's ruling regarding interLATA FX service – i.e., that interexchange carriers are subject to common carrier line (CCL) charges imposed by local carriers for use of their facilities to complete such calls at the "open" (terminating) end of the call. VZ Brief, *at* 24; BA-PA MO&O, at ¶¶79-80. What Verizon omits to discuss – significantly – is the FCC's decision with respect to *intraLATA* FX service. IntraLATA FX service is more akin to Verizon's 555 service offering because. under the terms of Verizon's tariff, 555 service is offered on a LATA wide only basis

[5] ""MemorandumOpinion and Order," AT&T Corporation v. Bell Atlantic - Pennsylvania, File Nos. E-95-006, et al., FCC 98-32 1 (Rel. Dec. 9, 1998) (BA-PA MO&O).. .Relevant portions of this decision are attached as Appendix A.

-- in other words. all 555 traffic carried by Verizon under its IntelliLinQ service, begins and ends within the same LATA. Staff Cross Exh. 3; Tr. III, at 58. Thus, Verizon's IntelliLinQ 555 service is purely intraLATA traffic, not interLATA traffic.

The FCC concluded that, "unlike the case of an interLATA FX line," a CCL charge could be imposed for the entire circuit used to provide intraLATA FX service. In reaching this conclusion, the FCC wrote:

> [W]e agree with *the* LECs' **view** that the connection between the subscriber and the home end office in intraLATA FX service, however it may **be** denominated, is the functional equivalent of a common line for purposes of determining CCL charge liability. It is a dedicated h e used merely to extend the subscriber's connection to a more distant end office n the **same** LATA, in order to obtain dialtone and various other features available in that distant office.

BA-PA MO&O, at ¶82. The FCC's conclusion, it noted was consistent with an earlier ruling in which a local exchange carrier was allowed to assess one, rather than two, end-user common line charges on intraLATA FX calls: on the rationale that, in the case of intraLATA FX service. "it is clear that *only* one access point exists, the access **point** has simply been linked to the customer's sewing office by a regular loop joined to an FX line''. Id.

In other words, **with** regard to intraLATA FX service, the FCC considers the entire circuit to be a local line subject to the imposition of CCL charges. Similarly, for intraLATA 555 traffic, the entire circuit should be considered a local line and as such, traffic ought to be carried over local interconnection trunks, unless FCC **rules** or ATIS guidelines provide otherwise. And as the record in this case makes clear, neither *the* FCC's rules nor the ATIS guidelines require 555 traffic to be treated as access – unlike the situation with 800, 500 *or*

900 traffic.

The other case cited by Verizon does not help it either.[6] In Mountain Communications, the FCC determined that an incumbent LEC may assess toll charges against *its* customers who call a paging carrier's customers pursuant to a wide area calling arrangement between the carriers. Id. *at* ¶11. In addition, where the wireless carrier opts to "buy down" the incumbent LEC's customers' costs to make these calls through a wide area calling arrangement (using dedicated *toll* facilities), the FCC concluded that the incumbent could charge the wireless carrier for those toll facilities. Id. at ¶12

Verizon's claim that the FCC's decision in Mountain Communications should apply begs the ultimate question -- namely whether the facilities over which 555 traffic from Verizon customers to NCC should be considered toll or local. More importantly, however: the FCC reiterated its prior determination *that* its rules prohibited incumbent LECs from charging wireless providers for delivering LEC-originated traffic originating and terminating within *the* same Major Trading *Area,* on the grounds that this constitutes "local" traffic. Id. In other words, calls from ILEC customers to wireless customers anywhere within the MTA, which typically *is* much larger than an ILEC's local calling area, is considered "local" for purposes of reciprocal compensation. This means that, unless *the* Commission determines 555 *traffic* to be access, *it* could be considered local and NCC would not be charged for traffic originating

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[6] See "Memorandum Opinion and Order," Mountain Communications, Inc. v. Qwest Communications International, Inc., File No. EB-00-MD-017, DA 02-250 (Rel. Feb. 4, 2002) (Mountain MO&O), review denied, In re: Mountain Communications, Inc., File No. EB-00-MD-017, FCC 02-220 (Rel. July 25, 2002).

and terminating within the local calling *area.* whch in this case would be consistent with Verizon's LATA-wide IntelliLinQ offering.

The fact remains that Verizon. by tariff - approved by **the** Commission - has designated 555 traffic as local for its own customers. Verizon has, in essence, opted for such traffic being treated as local, and *the* Commission has approved that choice. Moreover, ATIS has not directed that **555** traffic be considered access (**as** was the case for *500,* 800, 900, etc. traffic), instead leaving it to individual state commissions to decide whether it should be considered access or local. To allow Verizon to treat such traffic **as** local for its retail customers, **while** it imposes access charges for its customers' calls ***to*** NCC's (or other competitors') *555* numbers, would be anticompetitive and discriminatory. There is no **question** but that NCC and other competitors will be at a competitive disadvantage *if* they are precluded from offering 555 service to their own customers, comparable to that offered **by** Verizon ta its retail customers. NCC will be forced to pay access charges for traffic, originated by Verizon's customers and transported to NCC's 555 customers, thereby raising NCC's costs to provide competing service. Finally, if Verizon *is* directed to carry traffic its customers originate to NCC's 555 number;, there should be no additional cost to Verizon so long *as* the same limitation on 555 calling contained in Verizon's tariff applies to competitors (i.e., 555 is available only *to* Internet service providers), since such traffic is not subject to reciprocal compensation.

E. Verizon's Proposed Corrective Measures *Are* A Good Start, But Need To Given The Force Of Law By Commission Order.

Staff appreciates the corrective measures Verizon has undertaken to implement to help

prevent future fiascoes. Verizon's proposed corrective measures in several respects mirror those recommended by Staff in its initial brief and, **indeed** may be more stringent. These measures are a good start. However, Staff believes that, in light of Verizon's violations of Sections 251(b) and (c) of the Act, as well as its engaging in practices *that* are unreasonable, etc. under W. Va. Code § 24-2-7(a), it is incumbent upon the Commission to **fix** reasonable utility practices by order. In short, the Commission should not only accept the corrective measures offered by Verizon – it should impose them as affirmative obligations by order. ***Any*** modifications or changes to these measures accordingly would require prior consent and approval of ***the*** Commission.

III. CONCLUSION.

For all the foregoing reasons, the Commission should enter an order:

(1) Finding that Verizon violated Sections 251(b) **and** (c) of the Act, as well as requirements of the Commission's Telephone Rules, in interconnecting with NCC;

(2) Directing Verizon to implement the corrective measures it offers to undertake, in **accordance with** its initial brief; and

(3) Directing Verizon to route 555 *traffic* from its customers to Internet service providers served by NCC, or other cornpetiton, over local interconnection trunks.

Respectfully submitted. this 10th day of December, *2002.*

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APPENDIX A

Before the
Federal Communications Commission
Washington, D.C. 20554

AT&T CORPORATION, MCI TELECOMMUNICATIONS CORPORATION, *et al.*,	)	
Complainants,	)	
v.	)	File Nos. E-95-006, E-95-007, E-95409, E-95-010, E-95-015, E-95-016, E-95-017, E-95-018, E-95-021, E-95-022, E-95-030, E-95-035
BELL ATLANTIC - PENNSYLVANIA, *et al.*,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Adopted: December 2, 1998 Released: December 9, 1998

By the Commission:

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West points out that some CPE is also capable of establishing three-way calls, and argues that applying CCL charges to three-way calls facilitated by CPE, but not to those established by the LECs' service, would discriminate against subscribers who choose to use CPE capabilities."[171]

ii. Discussion

69. Once again, the IXCs' position overextends the Section 69.105(a) requirement for common line use. Three-way calling enables the subscriber to participate in two wholly *separate* calls at any given time and subsequently *to* join or link them for conferencing purposes. Both calls may originate or terminate over the subscriber's common line, but the fact that they are transmitted over that line simultaneously does not negate the independent, beneficial uses of the line by each. Because two calls originate or terminate over the subscriber's common line, both properly incur a CCL charge.

70. Nor can we agree with MCI's contention that the LECs' imposition of *two* CCL charges on the subscriber's end of a three-way calling configuration results in double recovery where one call is an interstate call and the other is subject to an intraLATA toll charge or other intrastate charge paid to the LEC for the option. As mentioned above, three-way calling involves two distinct calls using the same line, even though each call originates or terminates over the same common line. Therefore it is proper for a LEC to assess a CCL charge on an IXC for the interstate call, even if the LEC collects *other* intrastate charges for the intrastate call.

f. Foreign Exchange (FX) Service

i. Description and Contentions

71. Foreign Exchange (FX) service connects a subscriber ordinarily served by a local (or "home") end office to a distant (or "foreign") end office through a dedicated line from the subscriber's premises to the home end office, and *then* to the distant end office. The "home" end is known as the closed end, while the "foreign" end is known as the open end. In effect, this gives the subscriber a dial tone presence in the distant exchange without additional toll charges.[175] In interLATA FX service, which is offered by AT&T but not MCI,[176] the home and foreign end offices are in different LATAs, connected by the IXC's interstate private lines. In intraLATA FX service, which is offered by the LECs, the home and foreign end offices are in the same LATA,

(...continued)
Br. at 5; GTE Br. at 6.

[173] Bell Atlantic Br. at 10; SWBT Br. at 9; SWBT Reply at 11; Pacific Br. at 5.

[174] US West Reply at 12. *See* Section IV.2.a., regarding similar claim in call forwarding.

[175] AT&T Br. at 18-20.

[176] *See* Letter from Frank W. Krogh, Counsel, MCI, to Gerald H. Chakerian, Formal Complaints and Investigations Branch, Enforcement Division, Common Carrier Bureau, Federal Communications Commission (November 26, 1996).

C. *Qwest* May Lawfully Charge Mountain for Wide Area Calling.

11. As discussed earlier, section 51.703(b) of the Commission's rules bars a LEC from charging for the delivery of traffic that originates on the LEC's own network.[32] In the *TSR Wireless* Order. rhe Commission found that, pursuant to section 51.703(b), a LEC may not charge CMRS providers for the delivery of LEC-originated traffic that originates and terminates within the same Major Trading Area ("MTA"), as this constituted local traffic under the Commission's rules.[33] The Commission *noted,* however. that nothing prevents a LEC from charging its end users for intraLATA toll calk rhar originate on its nrrwork and terminate over facilities that are situated entirely within a single MTA.[34] Thus. if a LEC end user makes a call from *ose* iocai calling area io a paging customer whose number is assigned *to* a central office *in* anc ther local calling area of the LEC. the LEC m y assess the caller the appropriate toll set fonh tn *its* local tariff, even if both LEC calling areas are within the same MTA. Importantly, however. the Commission acknowledged in the *TSR Wireless* **Order** the possibility that a **paging** carrier might want to avoid having callers to its customers pay such toll charges. Thus, the Commission concluded that section 51 703(b) does nor preclude a CMRS carrier and a LEC from entering into wide area calling or reverse billing arrangements where the CMRS carrier can "buy **down**" the *cost* of such calls to make it appear to the LECs' end **users** that they have made a local call raiher than a toll call.[35] Moreover, the Commission concluded thar its tules **do** not prohibit a LEC from charging the paging carriers for those services.[36] The Commission's conclusion that section 51.703(b) allows a LEC to charge for wide area calling or *similar* **services was** based on the fact that wide area calling services are not necessary for interconnection or for the provision of service by a paging provider io its customers, as well as the recognition that the **Commission's** rules **do** nor require LECs to offer such services at all.[37]

12. As noted above. the wide area calling arrangement at issue here involves Qwest's provision of dedicated toll facilities that connect Mountain's DID numbers in each of Qwest's local calling areas to Mountain's interconnection point in another Qwesr local calling area. Thus. the calling customer in each of the local calling areas calk a local number to teach a Mountain subscriber and avoids incurring roil charges.[38] Mountain contends that Qwest violates the

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32 47 C.F.R. § 51.703(b).

33 *TSR Wireless Order.* 15 FCC Rcd at 11177, ¶ 31. Mountain notes that section 51.701(b)(2) defined "local telecommunications traffic" as "telecommunications traffic between a LEC and a CMRS provider that, at the beginning of a call. originates and terminates within the same MTA. *Id.* The Commission's recent removal of the word "local" from section 51.703 does not alter the definition contained in section 51.701(b)(2). *See Reciprocal Compensation Remand Order.* 16 FCC Rcd at 9167, ¶ 34, and 9173, ¶ 46.

34 *TSR Wireless Order.* 15 FCC Rcd at 11177, ¶ 31.

35 *Id.*

36 *Id.*

37 *Id.* at 11177, ¶ 30.

38 *See Qwest Brief* at 10-12. Second Supplemental Declaration of Sheryl R. Fraser, at ¶¶ 7-8.

Commission's rules by charging Mountain for rhe dedicated toll facilities rhat Qwest uses io transport calls made to Mountain's interconnection point from outside of the Qwesr iocai calling area where Mountain's interconnection point resides."[39] Mountain argues that. because a CMRS carrier's locd calling area is an MTA. Qwesr is not permitted to charge Mountain for facilities used by Qwest ID deliver calls from anywhere within the MTA to Mountain's interconnection point.[40] Mountain similarly maintains that Qwest cannot charge it for facilities Qwest uses to deliver to Mountain's interconnection point calls made to DID numbers chit are outside rhe Qwest-defined local calling area but within the same MTA. and the same LATA. because those facilities are used IO deliver Qwest-originated traffic to Mountain.[41]

13. Based on the Commission's analysis of wide area calling arrangements in *TSR Wireless*. we agree with Qwest that the provision of dedicated toll facilities by Qwesr to enable Mountain to offer its cusrorners a local number in several local calling areas is an optional service that is not necessary for interconnection.[42] We note that Mountain does not dispute that this service is not necessary for interconnection.[43] Moreover, although Qwest concedes that it must allow Mountain to interconnect without charge at my point within an MTA rhat is within the LATA,[44] Qwesr disagrees that it must transport, free of charge, all calls made *to* Mountain within the MT.4 IO Mountain's interconnection point. Qwest points out that, for those calls made by its end users in local calling areas outside the local calling area where Mountain's interconnection point resides, Qwest would ordinarily assess toll charges to those end users, pursuant to Qwest's General Exchange tariff in Colorado."[45] We agree with Qwest that, pursuant *to* the *TSR Wireless Order*, if Mountain wants to avoid having callers to its customers pay such charges ID access Mountain's network it may enter into a wide are2 calling arrangement with Qwest. Mountain has effectively entered into such an arrangement with Qwesr by requesting dedicared toll facilities to transport calls made to DID numbers provided to Mountain's customers, free of charge to Qwest's customers. We. therefore. conclude that Qwest is not prohibited from assessing Mountain charges for such services.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934. as amended, 47 U.S.C. §§ 154(i), 154(j), 208, and sections 51.703(b) and 51.709(b) ofrhe Commission's rules, 47 C.F.R. §§ 51.703(b) and 51.709(b), chat Mountain's Complaint IS DENIED and :ha rhis proceeding IS TERMINATED as of the Release

[39] *Mountain Brief* at 7-9.

[40] *Id.* at 8.

[41] *Mountain Brief* at 8.

[42] *See Qwest Brief* at 10-12.

[43] *See Mountain Brief* at 7-9.

[44] *Qwest Brief* at 11.

[45] *Id.*

connected by the LEC's intraLATA interoffice lines.[177]

72. The IXCs contend that the LECs impose improper CCL charges on originating or terminating calls that transit an interLATA FX service subscriber's closed end. The IXCs, noting that the link between the subscriber and the home end office is special access and that the link from there to the foreign end office is a private line (*i.e.*, together comprising the FX closed end), argue that the links cannot be considered as a common line and so should not be subject to CCL charges. The IXCs support this characterization of the closed-end as private or dedicated by reference to court decisions[178] and statements or omissions by the LECs themselves.[179] The IXCs also contend that there is no other common line forming part of this service that links a premises in the foreign LATA to the foreign end office. Accordingly, they conclude, no CCL charge for any part of the closed end is appropriate.[180]

73. BellSouth and GTE object to any consideration of AT&T's claims regarding interLATA FX service, arguing that AT&T did not allege any violations involving interLATA FX service in its complaint and raised them for the first time in its briefs.[181] Bell Atlantic, on the other hand, states that *only* issues pertaining to interLATA FX service are raised in AT&T's complaint.[182]

74. Regarding the merits of AT&T's claim, BellSouth argues that CCL charges for interLATA FX service are properly imposed at the distant end office[183] because the Commission has not exempted calls between interstate switched access services from CCL charges.[184] Other

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177 *See, e.g.*, AT&T Br. at 6-7; BellSouth Br. 35-36.

178 AT&T Br. at 20 (citing, *inter alia*, *National Association of Regulatory Utility Commissioners v. Federal Communications Commission*, 737 F.2d 1095, 1105 (D.C. Cir. 1984) (*NARUC v. FCC*)).

179 *Id.* (citing, *e.g.*, Bell Atlantic's Answer at para. 5; US West response to Interrogatories at 8); MCI Br. at 6-7.

180 AT&T Reply at 18-20; MCI Reply at 9. AT&T does not clearly distinguish these two possible locations of the unjustified common line charge. It describes the following FX scenario in Attachments 2 and 3 to its main brief: A subscriber in home LATA 2 obtains a telephonic presence in foreign LATA 1 by purchasing interLATA FX service, and places a call to, or receives a call from, a party in LATA 3. AT&T apparently contends that for calls following this pattern, the LECs impose CCL charges, either originating charges for calls initiated by the subscriber or terminating charges for calls received by the subscriber, at the foreign end office in LATA 1, even though no common line facilities are employed in that LATA. AT&T Br. at 19. At other points, however, AT&T seems to argue that the LECs impose CCL charges at what traditionally has been termed the "closed end" – the private lines connecting the subscriber to the home end office and, possibly, on to the foreign end office. AT&T Reply at 19-20.

181 BellSouth Reply at 13-14; GTE Reply at 12 n.21.

182 Bell Atlantic Br. at 10 n.22.

183 This is LATA 1 in AT&T's three-LATA example described in note 180, *supra*.

184 BellSouth Reply at 14 n.43 (*i.e.*, the closed end is special access and the open end is Feature Group A switched access).

LECs argue that the three-LATA scenario described in Attachments 1 and 2 to AT&T's brief is not the most efficient or cost effective means for making interLATA calls, and is so rare that it is virtually nonexistent.[185] In addition, the LECs state that CCL charges are properly assessed at the open end of an interLATA FX call,[186] and that they do not assess CCL charges at the closed end.[187]

75. IntraLATA FX service, in contrast to interLATA FX service, is provided by the LECs, and the subscriber and distant end office are within the same LATA.[188] The IXCs assert that the LECs unlawfully apply CCL charges at the distant end office point because private lines connect the subscriber to the home end ofice. and private lines also run between the two end offices.[189] The IXCs claim that, because the Lines connecting the subscriber to the home end office cannot be used to *make* calls without *also* using the intraLATA FX function, such lines *are* not common facilities.[190]

76. The LECs contest the IXCs' characterization *of* the connection between the intraLATA FX service subscriber and the home end office -- and in some cases the link from there *to* the foreign end office -- as a "private line." They maintain that an FX service subscriber purchases basic local exchange service, including common line, and that FX service merely extends the subscriber's local loop to a different local calling area within the same LATA.[191] Thus., the LECs argue that intraLATA FX service is a type of local exchange service. They assert that, although dial tone and other functions are performed at the distant end office, the subscriber's connection to the home end office *is,* ultimately. used for local as well as interexchange access.[192] Moreover, some LECs state that they assess CCL charges for the line between the subscriber and the home end office, not the private line connecting the two end offices.[193]

77. The LECs emphasize that intraLATA FX service is a local exchange service,, and they

[185] Ameritech Reply at 10; US West Reply at 8; *cf.* NYNEX Reply at 14.

[186] Bell Atlantic Br. at 10; Ameritech Reply at 9-10, NYNEX Reply at 13; SWBT Reply at 12. SWBT, for example, notes that a CCL charge at the foreign end office is required by Section 69.105(b)(2); SWBT Reply at 14-15.

[187] *See, e.g.*, Ameritech Reply at 9; SWBT Reply at 12.

[188] *See, e.g.*, AT&T Br. at 19.

[189] *Id.* at 19-21.

[190] *Id.* at 21. MCI does not clearly distinguish between interLATA and intraLATA FX, but it incorporates by reference all of AT&T's arguments on both types. MCI Br. 6-7; MCI Reply at 9.

[191] Ameritech Br. at 18; Ameritech Reply at 10; BellSouth Br. at 41; SWBT Br. at 10; Pacific Br. at 6-7; GTE Reply at 11.

[192] *See* NYNEX Reply at 14-15; BellSouth Br. at 41-42; SWBT Reply at 13, 15; Pacific Br. at 6-7.

[193] SWBT Reply at 13; *cf.* NYNEX Reply at 15 (records usage associated with the common line to subscriber, not at distant end office as indicated in AT&T Br. at Attachments 4 and 5).

argue that the authorities on which AT&T relies for its claim that all FX services use private lines are distinguishable because these sources involve interstate, interLATA FX service.[194] BellSouth, for instance, contends that an end user's selection of the FX option does not alter the fact that the subscriber's premises are connected to a Class 5 office in the home LATA, or the fact that the option is basically local exchange service.[195] Finally, SWBT argues that CCL charges are warranted because FX calls use the home end office switching equipment.[196]

ii. Discussion

78. First, we disagree with BellSouth and GTE that AT&T failed to raise allegations concerning interLATA FX service in its complaints. Although AT&T's complaints could have been clearer on this point, we find that it raised both interLATA and intraLATA FX service sufficiently to put the LECs on notice that both services were at issue. We note that AT&T included diagrams in its complaint depicting both services, and, reading the text of the complaint in conjunction with these diagram, we believe it is clear that AT&T complained of both services.[197] Moreover, the remaining LECs did not object on this ground in their briefs, and several responded to AT&T's allegations on the merits as to both services.[198]

79. There is no question that the closed end of interLATA FX service is a dedicated facility -- consisting of LEC special access and other dedicated LEC or IXC components -- that is directly linked to the foreign central office, because the line cannot be used to call anyone within the home LATA without incurring interLATA toll charges. Accordingly, the LEC should not impose a CCL charge specifically attributable to this facility as if it were a common line to the foreign office. and, it appears, none of the LECs do.

80. On the other hand, a CCL charge is appropriate at the open end of an interLATA FX line. A call with one terminus at the closed end transits the foreign central office on the open end and ultimately may link over a common line to any station in the foreign exchange or, potentially, to any station on the entire public switched network. Thus any completed interLATA FX call, whether originating or terminating on the FX subscriber's closed end, will have an actually-used common line at the terminus of the open end. Our conclusions here are consistent with Section 69.105(b)(iii) of the Commission's rules, which provides that "[a]ll open end minutes on calls with

[194] BellSouth Reply at 15-16.

[195] BellSouth Br. at 41; *see* BellSouth Br. at 42-46 (discussing the local service nature of intraLATA FX service).

[196] SWBT Br. at 10; SWBT Reply at 15.

[197] *See, e.g.*, US West Complaint at 8-9 & Attachment D.

[198] In addition, MCI's complaint against Ameritech does appear to raise the interLATA FX service issue. MCI Complaint at 10, para. 9(d). (Because MCI does not offer interLATA FX service, it could not be in the position of the IXC for the FX customer who originates a call from the home LATA 2 to the foreign LATA 1 in AT&T's three-LATA scenario. MCI could, however, be in the position of the IXC carrying a call originating in LATA 3 to the FX customer's dial-tone presence in foreign LATA 2 in that scenario.)

one open end (e.g., an 800 or FX call) shall be treated as terminating minutes." This rule recognizes that the sole CCL charge for an FX call is the one attributable to the common line of the non-subscriber who originates a call io, or receives a call from, the FX subscriber, and it provides that, even if a call originates at the open end, the single CCL charge should be deemed as terminating in order to be charged at the higher terminating rate. We note, however, that calls placed according to AT&T's three-LATA scenario are not subject to CCL charges for the link between the foreign end office and the IXC's POP in LATA 1 on the side enroute to LATA 3, because it is not a common line; the only common line on the open end is the termination in LATA 3.

81. As to intraLATA FX service, we find that the IXCs have not demonstrated that the LECs are violating Section 69.105(a) of our rules. We disagree with the IXCs' characterization of the line between the subscriber and the LEC as a "private" line. Unlike the case of an interLATA FX line, the intraLATA FX line connects an end user to a LEC end office in the same LATA and can be used in common for local exchange, intraLATA toll, and interLATA toll calls. The various authorities that the IXCs cite to support their characterization of FX service as a private line service address only interLATA FX.[199] Those decisions do not discuss or define the nature of intraLATA FX Service. In addition, the subscriber's inability to make local calls without also triggering the intraLATA FX service function, a point on which AT&T heavily relies, is not dispositive. It appears that in many cases, the subscriber may indeed make toll-free calls within the entire LATA.[200] In any event, we think that this factor may aid in understanding the call configuration, the role of the LECs, and the difference between interLATA and intraLATA FX service, but it does not mean that the connection necessarily functions as a private line for the purpose of CCL charge analysis.

82. Therefore, we agree with the LECs' view that the connection between the subscriber and the home end office in intraLATA FX service, however it may be denominated, is the functional equivalent of a common line for purposes of determining CCL charge liability. It is a dedicated line used merely to extend the subscriber's connection to a more distant end office in the same LATA, in order to obtain dialtone and various other features available in that distant office. Our findings are also consistent with the Common Carrier Bureau's approach to intraLATA FX service in *Bill Correctors*.[201] In that case, the defendant LEC was assessing two EUCL charges on intraLATA FX calls: one based on the line between the end user and the home end office, and a second based on the line connecting the home and distant end offices. In ruling that only one EUCL charge was appropriate, the Bureau stated that in the case of intraLATA FX service, "it is clear that only one access point exists; the access point has simply been linked to the customer's serving office by a regular loop joined to an FX line."[202]

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[199] *See, e.g., VARUC v. FCC*, 737 F.2d at 1105.

[200] *See* BellSouth Br. at Exhibit 10 (affidavit of Richard Merriman, Manager, Pricing, Bell South Telecommunications, Inc.).

[201] *Bill Correctors, Inc. v. Pacific Bell*, 10 FCC Rcd at 2305.

[202] *Id.* at 2308.

APPENDIX B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington. DC 20554

Mountain Communications, Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. EB-00-MD-017
	)	
Qwest Communications International, Inc.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Adopted: January 31, 2002 **Released:** February 4, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we deny the above-captioned formal complaint that Mountain Communications, Inc. ("Mountain") filed against Qwest Communications International Inc. ("Qwest", formerly U S West Communications, Inc.) pursuant to section 208 of the Communications Act of 1934, as amended (the "Act").[1] Mountain, a Commercial Mobile Radio Service ("CMRS") paging provider, alleges that Qwest violated sections 51.703(b) and 51.709(b) of the Commission's rules[2] by charging Mountain for transporting certain traffic.[3]

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[1] 47 U.S.C. § 208. Qwest is the successor to U S WEST Communications, Inc., following the companies' June 30, 2000 merger. *See Qwest Communications International, Inc. and U S WEST, Inc., Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, 15 FCC Rcd 11909 (2000). Although much of the conduct at issue occurred before the merger, we refer to the defendant only as "Qwest" in this order.

[2] *See* 47 C.F.R. §§ 51.703(b) and 51.709(b).

[3] Mountain also alleged in its complaint that Qwest violated section 51.305 of the Commission's rules, 47 C.F.R. § 51.305, and sections 201, 251, and 252 of the Act, 47 U.S.C. §§ 201, 251, 252, by failing to negotiate an interconnection agreement with Mountain in good faith. *See* Formal Complaint of Mountain Communications, Inc., File No. EB-00-MD-017, at 12-18 (filed Sep. 11, 2000) ("*Mountain Complaint*"). However, we previously dismissed these claims without prejudice on procedural grounds. *See* Letter Ruling from Frank G. Lamancusa, Deputy Chief,

[redacted]

EXHIBIT H

[redacted]

EXHIBIT H

PUBLIC SERVICE COMMISSION
WEST VIRGINIA
CHARLESTON

CASE NO 02-0254-T-C
NORTH COUNTY COMMUNICATIONS COW.,

Complainant.

VERIZON WEST VIRGINIA INC.,

Defendant

CASE NO 02-0722-T-CN

NYNEX LONG DISTANCE COMPANY, dba
VERIZON ENTERPRISE SOLUTIONS.

CA SE NO .02-0723-T-CN

BELL ATLANTIC COMMUNICATIONS: INC., dba
VERIZON LONG DISTANCE.

COMMISSION STAFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Commission Staff (Staff), by the undersigned counsel, hereby submits its proposed findings of fact and conclusions of law in these consolidated proceedings in accordance with the Commission's October 18, 2002, bench order governing post-hearing procedural matters.

PROPOSED FINDINGS OF FACT

BACKGROUND

1. North County Communications Corporation ("NCC") is certificated to provide competitive local exchange telecommunications service in West Virginia. See "Recommended Decision. " North County Comms., Case No. 00-0502-T-CN (July 21, 2000; Final, Aug. 10, 2000).

2. Verizon West Virginia Inc. (Verizon-WV) is an incumbent local exchange carrier ("ILEC"), subject to the duties applicable to ILECs under the Communications Act of 1934, as amended. including those set forth in Sections 251(b) and (c) of the Act. Verizon is a Bell operating company (BOC) as defined in Section 153(35).

3 Verizon Services Corporation provides interconnection services to various regional BOCs in the Verizon territory throughout the United States, including Verizon West Virginia Inc. (collectively, the companies will he referred to as Verizon) Tr. III, at 194-195.

4 Verizon-WV is a local exchange carrier (LEC) within its service territory in West Virginia, as defined in Section 153(44) of the Communications Act of 1934, as amended (the Act). See 47 U.S.C. § 153(44).

INTERCONNECTION NEGOTIATIONS

5 NCC submitted a request to negotiate an ICA for *West* Virginia to Bell Atlantic *Corporation (BAC)* -- *Verizon-WV's parent* corporation at the time – on April 4, 2000. MCC Exh. 3A, **p.** 1; Tr. I. at 31-45.